

REMARKS

In an Office Action dated 3 May 2005, the Examiner rejects claims 1-44 (all pending claims). In response to the Office Action, Applicants amend claims 1-5, 7-21, 24, and 27-44. Applicants also respectfully traverse the rejections. Claims 1-44 remain in the Application. In light of the amendments and the following arguments, Applicants respectfully request that the Examiner remove the rejections and allow the application.

The Examiner rejects claim 1 under 35 U.S.C. §102(e) as being anticipated by U.S. Patent number 6,460,050 issued to Pace et al. (Pace). To anticipate a claim under 35 U.S.C. § 102, a single source must contain all of the elements of the claim. *Lewmar Marine Inc. v. Barient, Inc.*, 827 F.2d 744, 747, 3 U.S.P.Q.2d 1766, 1768 (Fed. Cir. 1987), cert. denied, 484 U.S. 1007 (1988). Moreover, the single source must disclose all of the claimed elements “arranged as in the claim.” *Structural Rubber Prods. Co. v. Park Rubber Co.*, 749 F.2d 707, 716, 223 U.S.P.Q. 1264, 1271 (Fed. Cir. 1984). The **test for anticipation** is symmetrical to the test for infringement and has been stated as: “That which would literally infringe [a claim] if later in time anticipates if earlier than the date of invention.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 9 U.S.P.Q.2d 1913, 1920 (Fed. Cir. 1989); *Connell v. Sears Roebuck & Co.*, 722 F.2d 1542, 1548, 220 U.S.P.Q. 1931, 1938 (Fed. Cir. 1983). The Examiner has not provided a reference teaching each and every claimed element of amended claim 1.

Amended claim 1 recites “at least one First Tier identification server for receiving said representation and identifying said work from said representation; and at least one Second Tier ID server for identifying said work from said representation when said at least one First Tier Identification server does not identify said work.” Pace does not teach these limitations. Instead Pace teaches a first tier system that receives an e-mail and generates a digital identifier of the e-mail. See Col. 3, lines 40-44. The digital identifier is sent to a second tier system that classifies the e-mail. See Col. 3, lines 45-50. Thus, there is no teaching a first tier that tries to identify a work and when the first tier does not identify the work have a second tier attempt to identify the work. In fact, the first tier system in Pace performs the function of the analysis module recited in amended claim 1. Applicants have read the entirety of Pace and cannot find any teaching of using

two different systems to identify a work. For this reason, Applicants respectfully request the rejection of claim 1 be removed and amended claim 1 be allowed.

Claims 2-29 depend from amended claim 1. Thus, claims 2-29 are allowable for at least the same reasons as amended claim 1. Therefore, Applicants respectfully request that the rejections of claims 2-29 be removed and claims 2-29 be allowed.

Amended claim 30 recites a method for performing identifying work using the components recited in amended claim 1. Thus, amended claim 30 is allowable for at least the same reasons as amended claim 1. Therefore, Applicants respectfully request that the rejection of claim 30 be removed and amended claim 30 be allowed.

Claims 31-32 depend from amended claim 30. Thus, claims 31-32 are allowable for at least the same reasons as amended claim 30. Therefore, Applicants respectfully request that the rejections of claims 31-32 be removed and claims 31-32 be allowed.

Amended claim 33 recites the use of a tier system of servers that determine an identity of a work as recited in amended claim 1. Thus, amended claim 33 is allowable for at least the same reason as amended claim 1. Therefore, Applicants respectfully request that the rejection of claim 33 be removed and amended claim 33 be allowed.

Claims 34-38 depend from amended claim 33. Thus, claims 34-38 are allowable for at least the same reasons as amended claim 33. Therefore, Applicants respectfully request that the rejections of claims 34-38 be removed and claims 34-38 be allowed.

Amended claim 39 recites an apparatus that includes the means for performing the method recited in claim 30. Thus, claim 39 is allowable for at least the same reasons as amended claims 1 and 30. Therefore, Applicants respectfully request that the rejection of claim 39 be removed and claim 39 be allowed.

Claims 40-41 depend from amended claim 39. Thus, claims 40-41 are allowable for at least the same reasons as amended claim 39. Therefore, Applicants respectfully request that the rejections of claims 40-41 be removed and claims 40-41 be allowed.

Amended claim 42 recites an instruction executable by a machine that performs the method recited in claim 30. Thus, claim 42 is allowable for at least the same reasons


as amended claims 1 and 30. Therefore, Applicants respectfully request that the rejection of claim 42 be removed and claim 42 be allowed.

Claims 43-44 depend from amended claim 42. Thus, claims 43-44 are allowable for at least the same reasons as amended claim 42. Therefore, Applicants respectfully request that the rejections of claims 43-44 be removed and claims 43-44 be allowed.

If the Examiner has any questions regarding this response or the Application in general, the Examiner is invited to telephone the undersigned at 775-586-9500.

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Respectfully submitted,
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